

IN RE: IDAHO JUVENILE RULES) AMENDED
) ORDER ADOPTING REVISED
) IDAHO JUVENILE RULES
)
_____)

The Court having reviewed a recommendation from the Child Protection Committee and the Administrative Conference to amend the Idaho Juvenile Rules, and the Court having reviewed and approved the amendments to the Idaho Juvenile Rules;

NOW, THEREFORE, IT IS HEREBY ORDERED that Rules 16, 29 through 37, 39 through 46, 48, 51 through 53, and 58 of the Idaho Juvenile Rules are repealed and the revised Idaho Juvenile Rules attached to this order are hereby adopted.

IT IS FURTHER ORDERED that the effective date of this order shall be the __21st__ day of August, 2006.

DATED this __21st__ day of August 2006.

By Order of the Supreme Court

_____/s/_____
Gerald F. Schroeder, Chief Justice

ATTEST: _____/s/_____
Stephen W. Kenyon, Clerk

RULE 16. EXPANDING A JUVENILE CORRECTIONS ACT PROCEEDING TO A CHILD PROTECTIVE ACT PROCEEDING (J.C.A.)

(a) If at any stage of a J.C.A. proceeding the court has reasonable cause to believe that a juvenile living or found within the state is neglected, abused, abandoned, homeless, or whose parent(s) or other legal custodian fails or is unable to provide a stable home environment, as set forth in I.C. Section 16-1603, the court may order the proceeding expanded to a C.P.A. proceeding or direct the Department of Health and Welfare to investigate the circumstances of the juvenile and his or her family and report to the court as provided in I.C. § 16-1616. Any order expanding the proceeding to a C.P.A. proceeding must be in writing and contain the factual basis found by the court to support its order. The order shall direct that copies of all court documents, studies, reports, evaluations, and other records in the court files, probation files, and juvenile corrections files relating to the juvenile/child be made available to the Department of Health and Welfare at its request.

(b) Upon expanding the proceeding to a C.P.A., the court may order the juvenile placed in shelter care under the C.P.A. if that is in the best interest of the juvenile and needed for the juvenile's protection. If the juvenile is placed in shelter care, a shelter care hearing under the C.P.A. must be held within 48 hours, excluding Saturdays, Sundays, and holidays, and notice thereof shall be given to the juveniles parents(s), guardian, or custodian, and to the Department of Health and Welfare.

(c) A copy of the order expanding a J.C.A. proceeding to a C.P.A. proceeding shall be given to the juvenile's parent(s), guardian, or custodian, the Idaho Department of Health and Welfare, the prosecuting attorney and other counsel of record, and the Department of Juvenile Corrections if the juvenile is currently under commitment to the Department, pursuant to these rules and the rules of civil procedure.

(d) No further C.P.A. petition will be required. A petition may be filed to include other children that come within the jurisdiction of the C.P.A. but who are not before the court under the Juvenile Corrections Act. Any petition must be filed 14 days before the date set for the adjudicatory hearing. Any adjudicatory hearing pursuant to I.C. Section 16-1619 will be held within 30 days of the court's determination to expand the proceeding to a C.P.A. proceeding. A notice of the hearing will be served upon the parent(s), the Department of Health and Welfare, the juvenile, and the Department of Juvenile Corrections if the juvenile is currently under commitment to the Department, as though a petition under the C.P.A. has been filed. The burden of going forward with the evidence at the adjudicatory hearing shall remain with the prosecuting attorney.

(e) The proceeding under the J.C.A. will continue unless otherwise ordered by the court. The court may consolidate hearings under both the J.C.A. and the C.P.A. if the purposes of both acts can be served and the rights of the participants are not prejudiced.

(f) The Department of Juvenile Corrections shall have standing as an interested party in the child protective action if the juvenile is in the custody of the Department.

(g) Form of order expanding the Juvenile Correction Act proceeding to a Child Protective Act proceeding. The order expanding the Juvenile Correction Act proceeding to a Child Protective Act proceeding shall substantially conform to the following format:

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF _____
MAGISTRATE DIVISION

In the Interest of: _____)
) Case No. _____
)
) ORDER EXPANDING JUVENILE
) CORRECTIONS ACT (J.C.A.)
) PROCEEDING TO CHILD
 A Child Under Eighteen) PROTECTIVE ACT (C.P.A.)
 (18) Years of Age) PROCEEDING

This matter came before the Court under the J.C.A. on the ____ day of _____, 20 _____. Based upon the J.C.A. proceeding, the Court has reasonable cause to believe that the above named child is neglected and/or abused and/or abandoned and/or homeless or that the child's parent(s)/ guardian(s)/custodian(s) fail(s) or is/are unable to provide a stable home environment pursuant to Idaho Code Section 16 1603.

In support thereof, the Court does hereby enter findings of fact as follows:

1. The birth date, sex and residence address of the above named child are: ____
2. The names and residence addresses of the child's parent(s)/guardian(s)/custodian(s) are: _____
(If neither parent is within the state, or if the residence address of neither parent is known, the name and address of any known adult relative residing in Idaho is: _____)

3. The specific facts which bring the child(ren) within the jurisdiction of the Child Protective Act are:

(a) _____

(b) _____

(c) _____

(d) _____

4. (_____) (Initial and complete if child/children are to be placed in custody of I.D.H.W.) It is contrary to the welfare of the child [children] to remain in the home and it is in the best interest of the child to be removed from the home pending further proceedings in this case. It is in the best interest of the child to vest legal custody of the child [children] in the Idaho Department of Health and Welfare pending further proceedings. The court makes this finding based on:

(_____) information set forth in _____, prepared by _____, and dated _____, which is incorporated by reference in this order.

(_____) the following information: _____

Based upon the foregoing findings and conclusions,

THE COURT HEREBY ORDERS that pursuant to I.J.R. 16, the J.C.A. proceeding is hereby expanded to a C.P.A. proceeding. The filing and service of this Order shall have the same effect as the filing and service of a C.P.A. petition.

THE COURT FURTHER ORDERS that: (initial if applicable)

(_____) the above named child(ren) shall be taken forthwith to a place of shelter care by either a peace officer or an Idaho Department of Health and Welfare (I.D.H.W.) caseworker, based upon the best interest of the child(ren) and the need for the child(ren)'s protection and further, that said child(ren) is/are hereby placed in the temporary custody of the I.D.H.W. pending the shelter care hearing and/or further order of the Court; and the shelter care hearing under the C.P.A. shall be held within 48 hours of entry of this Order excluding weekends and holidays and notice of state action shall be given to the child's parent(s)/guardian(s)/ custodian(s) and I.D.H.W. as provided by I.J.R. 16(c) and 32.

(_____) the above named child(ren) does/do not appear endangered by present circumstances and may remain in the custody of the parent(s)/ guardian(s)/custodian(s) pending the adjudicatory hearing and/or further order of the Court; and the adjudicatory hearing under the C.P.A. shall be held within 30 days of entry of this Order and notice thereof shall be served by summons upon the child(ren), his/her/their parent(s)/guardian(s)/custodian(s), and notice thereof shall be given to I.D.H.W. and the Department of Juvenile Corrections if the juvenile is in the custody of the Department, as provided by Rule 16(d), I.J.R.

(_____) the Idaho Department of Health and Welfare shall investigate the applicability of the Indian Child Welfare Act (25 USC 1901) to this proceeding.

(_____) copies of all court documents, studies, reports, evaluations, and other records in the court files, probation files and juvenile corrections files relating to the child(ren) shall be made available to the Idaho Department of Health and Welfare at its request.

(_____) Other: _____

DATED this ____ day of _____, 20 ____.

JUDGE

Copies: H. & W. ☐ Juv. Prob. ☐ Parent ☐ Pros.Att. ☐ Def. Att. ☐ Other ☐

(h) Form of order directing the Department of Health and Welfare to investigate. The order directing the Department of Health and Welfare to investigate the circumstances of the juvenile and his or her family shall substantially conform to the following:

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF _____
MAGISTRATE DIVISION

In the Interest of:)
) Case No. _____
)
) ORDER FOR INVESTIGATIVE
) REPORT TO THE COURT
A Juvenile under 18) UNDER I.J.R. 16
years of age)

Pursuant to Rule 16 of the Idaho Juvenile Rules and Section 16-1616, Idaho Code, and good cause appearing therefor;

IT IS HEREBY ORDERED that the Department of Health & Welfare shall conduct an investigation and shall report to the court information concerning the juvenile. This investigation shall include but may not be limited to the circumstances of the juvenile and his/her family. It shall also include appropriate family, social, educational, psychological and law enforcement information as they relate to the juvenile. This report shall be delivered to the court with copies to each of the parents or their attorney, any other legal custodian and the prosecuting attorney at least two (2) days before the date set by this court for hearing on this matter, _____, 20 ____, at _____: _____.
m. The Department of Health and Welfare shall include with the investigation report a

recommendation to this court as to the application of Idaho Juvenile Rule 16 or the application of the Idaho Child Protective Act.

IT IS FURTHER ORDERED that copies of all court documents, studies, reports, evaluations and other records in the court files, probation files and juvenile corrections files relating to the juvenile be made available to the Department of Health and Welfare at its request.

In support thereof, the Court does hereby enter findings of fact as follows:

1. The birth date, sex and residence address of the above named juvenile are _____
2. The names and residence addresses of the juvenile's parent(s), guardian(s) or custodian(s) are _____

If neither parent is within the state, or the residence or whereabouts of the parents are unknown, the name of any known adult relative residing in Idaho is _____

3. The facts which have caused the court to order this report are:

a. _____

b. _____

c. _____

ORDERED this ____ day of _____, 20 ____,

Magistrate Judge

Copies: H. & W. ☐ Juv. Prob. ☐ Parent ☐ Pros.Att. ☐ Def. Att. ☐ Other ☐

Comment of the Child Protection Committee

“Contrary to the Welfare” finding under state and federal law. In order to establish eligibility for federal IV-E funding as well as federal adoption assistance funding for children in foster care, federal law requires that the court make a written, case-specific finding, in the first order sanctioning removal of the child from the home, that remaining in the home is contrary to the welfare of the child. See 45 DFR 1356.21(c). An order

removing the child from the home under this rule may be the first order sanctioning removal of the child from the home, and in such cases, this finding is necessary to ensure the child's eligibility for funding.

Consequences of non-compliance with federal requirements. If the case-specific "contrary to the welfare" finding required by federal law is not made, or is not made at the correct time, the error cannot be corrected at a later date to restore funding. The required finding cannot be a simple recitation of the language of the statute; however, if the case-specific information upon which the finding is based is set forth in a document in the court record (such as an affidavit), the finding can incorporate the document by reference without reiterating the facts as set forth in the document.

RULE 29. APPLICATION OF OTHER RULES (C.P.A.)

The Idaho Rules of Civil Procedure shall apply to C.P.A. proceedings to the extent that they are not inconsistent with these rules, statutes, or the law.

Comment of Child Protection Committee

The Idaho Supreme Court's Child Protection Committee has developed recommended forms and sponsored the Idaho Child Protection Manual. These resources are consistent with these rules, and are available online at <http://www.isc.idaho.gov/childapx.htm>.

RULE 30 [RESERVED]

RULE 31. EMERGENCY (PRETRIAL) REMOVAL OF A CHILD AND/OR OFFENDER (C.P.A.)

There are four procedures pursuant to which a child or an alleged offender may be removed from the home prior to the adjudicatory hearing:

- (a) A child or an alleged offender may be removed from the home by a peace officer upon a declaration of imminent danger by a peace officer, without prior court order, pursuant to I.C. § 16-1608(1).
- (b) A child may be removed from the home upon an endorsement on summons by the court, pursuant to I.C. § 16-1611(4) and I.J.R. 34.
- (c) A child may be removed from the home upon order of the court following a shelter care hearing pursuant to I.C. § 16-1615 and I.J.R. 39.
- (d) A child may be removed from the home and placed in shelter care upon order of the court when the court expands a J.C.A. proceeding to a C.P.A. proceeding pursuant to I.J.R. 16.

RULE 32. NOTICE OF EMERGENCY REMOVAL (C.P.A.)

- (a) When a child is taken into custody pursuant to I.C. § 16-1608(1)(a) under a declaration of imminent danger, the peace officer shall provide a written notice of emergency removal to the court, and to the parent(s), guardian or custodian, in accordance with I.C. § 16-1609(1).

(b) When an alleged offender is removed from the home pursuant to I.C. 16-1608(1)(b) written notice of emergency removal shall be provided to the alleged offender.

(c) The notice of emergency removal to the parent(s), guardian, or custodian shall contain a notification of right to counsel and right to court appointed counsel, pursuant to these rules, and shall be given by personal service at least 24 hours prior to the shelter-care hearing. Notice is not required for purposes of the shelter-care hearing in the event the parent(s), guardian, or custodian cannot be located or are out of state.

(d) The notice of emergency removal of the child or alleged offender from the home shall substantially conform to the following format:

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT OF THE
STATE OF
IDAHO, IN AND FOR THE COUNTY OF _____

IN THE MATTER OF:) Case No. _____
)
_____,) NOTICE OF EMERGENCY REMOVAL
) UNDER Idaho Code §§ 16-1608
A child under the age of) and 16-1609
eighteen (18) years.)
_____)

GREETINGS TO:

(____) The undersigned hereby gives notice that on _____, the above-named child was removed by a peace officer and taken to a place of shelter at a (foster/group) home previously designated by this court for his/her immediate care and protection.

(____) The undersigned hereby gives notice that on _____, the alleged offender was removed from the home for the protection of the child, and the child was allowed to remain in the home.

I further certify that in accordance with Idaho Code § 16-1609, I duly notified the parent(s), guardian, or custodian of the above-named child and/or the alleged offender that a shelter-care hearing will be conducted by this court within (24/48) hours, excluding Saturdays, Sundays, and holidays.

By this notice, the parent(s), guardian, custodian, or the alleged offender have been informed of their right to retain and be represented by an attorney. If the parent(s), guardian, custodian, or alleged offender cannot afford an attorney, an attorney can be appointed by the court.

If you wish to have the court appoint an attorney for you, please immediately call (telephone) or go to the _____ County Court, (address) , to make application for a court-appointed attorney because time is of the essence.

_____	_____
Date	Person Exercising Emergency Powers
Hearing: _____	Notice: _____
Location: _____	Served on: _____
Day: _____	Served by: _____
Date: _____ Time: _____	
Date: _____ Time: _____	

RULE 33. SUMMONS (C.P.A.)

(a) After a petition has been filed service of process shall be made as provided in Idaho Code §§ 16-1611 and 16-1612.

(b) Form of Child Protective Act Summons. The summons in Child Protective Act cases shall substantially conform to the following format:

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT OF THE STATE
OF IDAHO,
IN AND FOR THE COUNTY OF _____

IN THE MATTER OF:)
_____) CHILD PROTECTIVE
) ACT SUMMONS
A child under the age of)
eighteen (18) years.)
_____)

THE STATE OF IDAHO SENDS GREETINGS TO:

(name)

(address)

(city & state)

YOU ARE HEREBY NOTIFIED THAT:

A petition, a copy of which is attached, has been filed in the above-entitled matter in the magistrates division of the district court of _____ County, Idaho, by the prosecuting attorney, alleging that the above-named child comes within the jurisdiction of the Child Protective Act, and

You, the person(s) who has/have the custody or control of said child, are hereby directed to appear personally and bring said child before this court for (type of) hearing at the _____ Courthouse, (address) , (city) , Idaho, on _____, 20____, at _____ o'clock _____.m.

You are hereby notified that service of the attached petition upon you, as the parent(s), guardian, or custodian of this child, does confer the personal jurisdiction of the court upon you and does subject you to the provisions of the Child Protective Act.

You are notified, if you or any person served with a summons shall fail to appear without reasonable cause, the court may proceed in such person's absence or such person may be proceeded against for contempt of court. If the court proceeds without your presence, you may forfeit all of your rights.

You are notified that the parent(s), guardian, or custodian may be financially liable for the support and/or treatment of the child.

You are further notified that the parent(s), guardian, or custodian have the right to be represented by an attorney of your choosing, or if financially unable to pay, have the right to have an attorney appointed by the court to represent the parent(s), guardian, or custodian at county expense. If you request to have an attorney appointed at county expense, you must appear before the court at the address given above, at least two (2) days, excluding weekends and holidays, before the date of the hearing given above, at _____ o'clock _____.m., at which time the court shall consider appointment of an attorney the parent(s), guardian, or custodian.

You are further notified that there shall be a rebuttable presumption that if a child is placed in the custody of the department and is also placed in out of the home care for a period not less than fifteen (15) out of the last twenty-two (22) months from the date the child entered shelter care, the department shall initiate a petition for termination of parental rights. This presumption may be rebutted by a finding of the court that the filing of a petition for termination of parental rights would not be in the best interests of the child or reasonable efforts have not been provided to reunite the child with his family, or the child is placed permanently with a relative.

WITNESS MY HAND AND SEAL of said Magistrate Court this ____ day of _____, 20____.

CLERK OF THE DISTRICT COURT

by _____
Deputy Clerk

STATE OF IDAHO)
) ss.
COUNTY OF _____)

I HEREBY CERTIFY AND RETURN that I have received the above Summons and copy of the petition in the above-entitled matter on the ____ day of _____, 20____, and personally served the same on _____ by delivering to _____ in _____ County, state of Idaho, a copy of said Summons duly attested by the clerk of the above-entitled court, together with a copy of the petition and a copy of the Order Setting Time and Place of Hearing.

DATED this ____ day of _____, 20____.

by _____
(Deputy Marshal/Deputy Sheriff)

RULE 34. ENDORSEMENT ON SUMMONS (C.P.A.).

(a) The court may endorse the summons, ordering the removal of the child from the home, in accordance with I.C. § 16-1611(4). Application for the endorsement must be made in writing, either in the petition or by separate motion of the petitioner. Determination shall be made on facts presented to the court ex parte, either by testimony or affidavit.

(b) If the endorsement on summons is the first order sanctioning removal of the child from the home, the court will make written, case-specific findings that remaining in the home is contrary to the child's welfare and that vesting legal custody with the department or other authorized agency is in the best interest of the child.

(c) Form of Endorsement on Summons. The endorsement on summons in Child Protective Act cases shall substantially conform to the following format:

ENDORSEMENT ON SUMMONS

It is contrary to the welfare of the child [children] to remain in the child's [children's] present condition or surroundings, and it is in the best interest of the child [children] to place the child[children] in the legal custody of the Idaho Department of Health and Welfare until the shelter care hearing. This finding is made based on the information set forth in the verified Petition Under the Child Protective Act, and the affidavit attached to and incorporated in the Petition, that have been filed in this case.

IT IS HEREBY ORDERED that a peace officer or other authorized person promptly take [child(ren)'s name(s)] to an authorized place of shelter care until the shelter care hearing. (The date, time, and place of the shelter care hearing is stated above.)

DATED this day of _____, 20____

MAGISTRATE JUDGE

Comment of the Child Protection Committee

As to subsection (b), federal law requires the court to make a written, case-specific finding that remaining in the home is contrary to the child's welfare. *See* 45 CFR §1356.21(c). Idaho Code § 16-1611(4) requires the court to find that remaining in the home is contrary to the child's welfare and that vesting legal custody in IDHW is in the child's best interests. The policy of the rule is to require written case specific findings on both best interest and contrary to the welfare. Failure to timely make the federal finding will result in loss of federal funding for the child. If the case-specific finding is not made, or not made at the required time, the error cannot be corrected at a later date to restore funding. The finding cannot be a simple recitation of the language of the statute; however, if the case-specific information upon which the finding is based is set forth in a document in the court record (such as an affidavit), the finding can incorporate the document by reference without reiterating the facts set forth in the document.

RULE 35. GUARDIAN AD LITEM PROGRAMS (C.P.A.)

(a) The purpose of Guardian ad Litem programs in Idaho shall be to provide court-appointed volunteer advocacy to abused, neglected, abandoned and/or homeless children.

(b) Each GAL program shall have a governing body responsible for overseeing compliance with all applicable laws and regulations, adoption of program policies, the defining of program services, and the guidance of program development.

(c) The GAL programs shall communicate, collaborate, and share information with fellow programs in the state.

(d) The GAL Program follows written policies for inclusiveness, recruitment, selection, training, retention, effective performance and evaluation of its paid personnel.

(e) Each GAL Program shall develop and follow written policies for its volunteers regarding recruitment; application, selection and screening; training; supervision; volunteer roles and responsibilities; and dismissal.

(1) Each GAL Program shall require that volunteers complete at least 30 hours of required pre-service training and 12 hours of required in-service training per year

(2) Pre-service training shall include the following topics:

- (A) Roles and responsibilities of a GAL volunteer;
- (B) Court process;
- (C) Dynamics of families including mental health, substance abuse, domestic violence, and poverty;
- (D) Relevant state laws, regulations and policies;
- (E) Relevant federal laws, regulations and policies, including the Adoption and Safe Families Act (ASFA), the Child Abuse Prevention and Treatment Act (CAPTA), the Indian Child Welfare Act (ICWA), and the Multi Ethnic Placement Act (MEPA);
- (F) Confidentiality and record keeping practices;
- (G) Child development;
- (H) Child abuse and neglect;
- (I) Permanency planning;
- (J) Community agencies and resources available to meet the needs of children and families;
- (K) Communication and information gathering;
- (L) Effective advocacy;
- (M) Cultural competency
- (N) Special needs of the children served
- (O) Volunteer safety
- (P) Educational advocacy

(f) Each GAL program shall manage its operations in accordance with generally accepted financial and risk management practices and applicable federal, state and local statutory requirements.

(g) Each GAL program shall purchase liability protection for governing body, organization, program staff and volunteers to the extent that such individuals are not otherwise immune from liability under Idaho law.

(h) Each GAL program shall maintain management information and data necessary to plan and evaluate its services.

(i) Each GAL Program shall maintain complete, accurate and current case records and follow local policies for acceptance and assignment of GAL cases.

(j) Each GAL program shall follow written policies and procedures regarding access to, use of, and release of information about the children it serves to ensure that children's confidentiality is maintained at all times.

(k) Each GAL program shall complete the following national fingerprint based criminal records checks:

(1) GAL volunteers shall obtain a national fingerprint based criminal records check prior to being assigned a case, at least every two years thereafter and at any time requested by the Program Director;

(2) Program Staff shall obtain a national fingerprint based criminal records check at the time of hire and at anytime thereafter at the discretion of the Program Director; and,

(3) Members of the Board of Directors of the Program shall obtain a national fingerprint based criminal records check upon appointment to the Board and at anytime thereafter at the request of the Board of Directors or the Program Director.

Comment of the Child Protection Committee

The standards for Idaho guardian ad litem programs were patterned after the Standards for National CASA Association Member Programs (2006) developed by National CASA.

The Standards for National CASA Association Member Programs (2006) may provide instructive detail to the general standards set forth in this Rule.

RULE 36. GUARDIAN AD LITEM (C.P.A.)

(a) As soon as practicable after the filing of the petition, the court shall appoint a guardian ad litem for the child as provided in I.C. § 16-1614.

(b) Upon the resignation or removal of a guardian ad litem, the court shall appoint a successor guardian ad litem for the child or children in accordance with I.C. § 16-1614.

Comment of the Child Protection Committee

The distinction between the roles of attorney for the child and guardian ad litem (lay or attorney) for the child is significant. A lawyer who represents either the child or the lay guardian ad litem is bound by the Rules of Professional Conduct to represent the child/lay guardian ad litem as a client and to take direction and guidance from the child/lay guardian ad litem client. An attorney or lay person acting in the role of guardian ad litem for the child advocates in the best interest of the child, but is not bound to advocate the express wishes of the child or take direction from the child. A lay guardian ad litem cannot provide legal representation for the child. *See American Bar Association Standards of Practice for Lawyers Representing Children in Abuse and Neglect Cases* (1996); *ABA Standards of Practice for Lawyers Representing Children in Abuse and Neglect Cases (NACC Revised Version)* (1999); and *NACC Recommendation for Representation of Children in Abuse and Neglect Cases* (2001).

RULE 37. RIGHT TO COUNSEL (C.P.A.)

(a) The court should appoint counsel to represent the guardian ad litem, unless the guardian ad litem has counsel or has waived counsel.

(b) The court may appoint separate counsel for the child in appropriate cases. The court may consider the nature of the case, the child's age, maturity, intellectual ability, and other factors relevant to the child's need for counsel and ability to direct the activities of counsel.

(c) If there is no qualified guardian ad litem program or qualified guardian ad litem available, the court shall appoint counsel for the child as provided in I.C. § 16-1614.

(d) The parent(s), guardian, or legal custodian has the right to be represented by counsel in all proceedings before the court. The court shall appoint counsel to represent the parent(s), guardian, or legal custodian if it finds that they are financially unable to pay for such legal services, unless representation is competently and intelligently waived.

(e) Notice of the right to be represented by counsel, and at public expense where financial inability exists on the part of the parent(s), guardian, or legal custodian, should be given at the earliest possible time. Notice shall be given in the summons, and at the outset of any hearing in which the parent(s), guardian, or legal custodian is making a first appearance before the court.

Comment of the Child Protection Committee

Rule 37(b) does not specify who may request counsel for the child because it is the opinion of the committee that the Department of Health and Welfare, the child or any party may request counsel for the child.

RULE 38. STIPULATIONS (C.P.A.)

All or some of the parties may enter into stipulations as to any issue at any stage of a proceeding under the Child Protective Act. Stipulations shall be made part of the court record, and are subject to court approval. The court may enter orders or decrees based upon such stipulations only upon a reasonable inquiry by the court to confirm that the parties entered into the stipulation knowingly and voluntarily, that the stipulation has a reasonable basis in fact, and that the stipulation is in the best interest of the child. Any order entered based on a stipulation must include all case-specific findings required by the state or federal statute or these rules.

Comment of the Child Protection Committee

Stipulations by parties are encouraged. However, in order to ensure that the child remains fully eligible for federal funding, orders entered based on such stipulations must include the findings required under these rules. For example rules that require written

case-specific findings include Rule 34 (Endorsement on Summons), Rule 39 (Shelter Care), Rule 41 (Adjudicatory Hearing), and Rule 46 (Annual Permanency Hearing).

RULE 39. SHELTER CARE HEARING (C.P.A.)

(a) The purpose of the shelter care hearing is to determine whether the child will be placed in or remain in shelter care pending the adjudicatory hearing.

(b) The court shall schedule a shelter-care hearing whenever a child or alleged offender is removed from the home as described in I.J.R. 31(a), (b), and (d), or upon the written motion or petition of the petitioner with or without prior removal of a child or alleged offender.

(c) When a child is taken into custody as described in I.J.R. 31(a) or (d), the court must hold a shelter-care hearing within 48 hours, excluding weekends and holidays.

(d) When an alleged offender is removed from the home under I.J.R. 31(a), the court must hold a shelter-care hearing within 24 hours, excluding weekends and holidays.

(e) The Idaho Rules of Evidence, other than those regarding privileges, do not apply in a shelter-care hearing as provided in I.R.E. 101(e)(6).

(f) The shelter-care hearing may be continued for a reasonable time by request of the parent(s), guardian, or custodian of the child upon entry of a waiver of the statutory time limits for setting the shelter-care hearing. The court may also grant a reasonable continuance to all other parties or participants upon good cause shown.

(g) At the time of the shelter-care hearing, the court shall advise the child, if present, and the parent(s), guardian, or custodian of their right to be represented by an attorney and, if financially unable to hire an attorney, of their right to be represented by a court-appointed attorney. The court should verify that each party has a copy of the petition and they are advised of the allegations therein; the purpose and scope of the hearing; the possible consequences of the proceedings, including termination of parental rights; the right of the parties to present evidence and to cross-examine witnesses regarding whether the child should return home with or without conditions or whether the child should be placed in protective care; and that failure to appear at future hearings could result in a finding that the petition has been proved, issuance of an order adjudicating that the child is in need of protection or services, and an order transferring permanent legal and physical custody of the child to another.

(h) The shelter-care hearing in its entirety shall be placed upon the record, and the general public shall be excluded in the manner set forth in I.J.R. 52.

(i) Pursuant to I.C. § 16-1615(5), and following receipt of evidence at the shelter care hearing, the court shall enter an order of shelter care/protective order if shown that:

(1) A petition has been filed; and

(2) Reasonable cause exists to believe that the child comes within the jurisdiction of the C.P.A.; and

(3) Reasonable efforts were made but were unsuccessful in eliminating the need for shelter care; or the department's efforts to prevent removal were reasonable given that the department's assessment accurately determined that no preventative services could be safely provided; and

(4) The child could not be placed in the temporary sole custody of a parent having joint legal or physical custody; and

(5) It is contrary to the welfare of the child to remain in the home; and

(6) It is in the best interest of the child to remain in shelter care pending the adjudicatory hearing.

The court's findings as to reasonable efforts to prevent removal shall be in writing, and case-specific. If the shelter care order is the first order sanctioning removal of the child from the home, the court shall make written, case-specific findings that remaining in the home is contrary to the child's welfare and that vesting custody with the department or other authorized agency is in the best interest of the child.

(j) The court may enter a protective order as defined in I.C. § 16-1602(28), in addition to the shelter care order or instead of the shelter care order if it is shown that:

(1) Reasonable cause exists to believe the child comes within the purview of the C.P.A.; and

(2) A reasonable effort to prevent placement of the child outside the home could be effected by a protective order safeguarding the child's welfare and maintaining the child in the child's present surroundings.

(k) The court shall enter its order within 24 hours. If the court enters an order placing the child in shelter care, then the court must set the adjudicatory hearing as soon as possible and not more than 30 days after the filing of the Child Protective Act petition, or the date the court orders a Juvenile Corrections Act case expanded to a Child Protective Act case, or service of the endorsement on the summons, whichever occurs later. If the court does not find that the child should remain in shelter care, the court may return the child to the home under a protective order, which will safeguard the child's health, safety or welfare, or may dismiss the petition.

(l) In making the determination as to whether shelter care of the child is required, the court shall consider any relevant facts consistent with subsection (i) of this rule, but generally the existence of any of the following facts will justify ordering temporary shelter care of the child:

(1) The child is in immediate need of medical treatment; or

(2) The child is seriously endangered in the child's surroundings and prompt removal appears to be necessary for the child's immediate protection; or

(3) The evidence indicates a danger that some action may be taken which would deprive the court of jurisdiction over the child; or

(4) The court finds that the facts alleged in the petition are more probably true than not true.

(m) At the shelter care hearing, or at any other time, upon notice and motion by any party, the court may make the following determinations, which shall temporarily suspend further efforts to reunify the child who is the subject of the action with the child's parent, pending further order of the court:

(1) when a termination of parental rights petition has been filed regarding this child; or

(2) there is reason to believe that the parent had subjected the child to aggravated circumstances including, but not limited to: abandonment; torture; chronic abuse; sexual abuse; committed murder; committed voluntary manslaughter; aided or abetted; attempted, conspired or solicited to commit such a murder or voluntary manslaughter; committed a felony assault that results in serious bodily injury to the child or another child of the parent; or

(3) the parental rights of the parent to a sibling have been terminated involuntarily.

Comment of the Child Protection Committee

“Contrary to the Welfare” finding under state and federal law. In order to establish eligibility for federal IV-E funding as well as federal adoption assistance funding for children in foster care, federal law requires that the court make a written, case-specific finding, in the first order sanctioning removal of the child from the home, that remaining in the home is contrary to the welfare of the child. See 45 CFR 1356.21(c). Idaho Code §§16-1615 (5) (b) and 16-1619(6) require that the “contrary to the welfare” finding be made at the shelter care hearing and, if the court vests custody of the child in the department, again at the adjudicatory hearing. Failure to timely make the “contrary to the welfare finding” will result in loss of federal IV-E funding for the duration of the child's stay in foster care.

“Reasonable Efforts to Prevent Removal” finding under federal law. Federal law also requires that the court make a finding that either the department did or did not make reasonable efforts to prevent removal of the child from the home. The “reasonable efforts to prevent removal” finding must be made within 60 days of the child's removal from the home. 45 CFR 1356.21 (b) (i) and (ii). Failure to timely make the federal “reasonable efforts to prevent removal” finding will result in loss of federal IV-E funding for the duration of the child's stay in foster care. Federal officials overseeing the funding process have taken the position that a finding that no reasonable efforts were made due to imminent danger to the child does not comply with federal law.

“Reasonable Efforts to Prevent Removal” finding under state law. The Idaho statutory requirement for reasonable efforts to prevent removal differs from the federal requirement. Idaho Code § 16-1615(5)(b), requires that the court find either 1) that reasonable efforts were made but were unsuccessful, or 2) that no reasonable efforts were made due to imminent danger. ***The second finding authorized by state law is a “no reasonable efforts” finding that does not comply with federal law. Making this finding will jeopardize the child’s eligibility IV-E funding.***

Resolution of State/Federal requirements by Rule 39. Rule 39(i)(3) has been drafted to require a finding that is both authorized by the first prong of Idaho Code § 16-1615(5)(b) and is consistent with the federal requirement. The Rule requires a finding that either 1) reasonable efforts were made but were unsuccessful, or 2) the department's efforts were reasonable given that the department accurately determined that no preventative services could be safely provided.

Consequences of non-compliance with federal requirements. If the case-specific "contrary to the welfare" and "reasonable efforts" findings required by federal law are not made, or not made at the required time, the error cannot be corrected at a later date to restore funding. The required findings cannot be a simple recitation of the language of the statute; however, if the case-specific information upon which the finding is based is set forth in a document in the court record (such as an affidavit), the finding can incorporate the document by reference without reiterating the facts set forth in the document.

Recommended Best Practice on Continuances. Except in extraordinary circumstances continuances should be for very short periods of time such as two or three days, to ensure compliance with the time requirements applicable to later stages of a Child Protective Act proceeding. If the court enters an order of continuance that addresses the issue of custody of the child in any way, then the order of continuance is the first order sanctioning removal of the child from the home and the case-specific contrary to the welfare finding is required. An alternative practice is to enter the order of continuance and leave the prior declaration of imminent danger or endorsement on summons in effect without further order of the court.

RULE 40. NOTICE OF FURTHER PROCEEDINGS (C.P.A.)

(a) Notice of the time, date, and place of further proceedings after an initial appearance or service of summons may be given in open court, by written acknowledgment of receipt, or by mail to any party. Notice shall be sufficient if the clerk deposits the notice in the United States mail, postage prepaid, to the address provided by the party to the court or the address at which the party was initially served, and files a certificate of such service, or if notice is sent by registered or certified mail.

(b) The notice of hearing shall conform to the following format:

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT OF THE STATE
OF IDAHO,
IN AND FOR THE COUNTY OF _____

IN THE MATTER OF:) Case No. _____
)
_____,) NOTICE OF HEARING
)
A child under the age of)
eighteen (18) years.)
_____)

PLEASE TAKE NOTICE that the above matter has been set for hearing in the Magistrate Court at the _____ County Courthouse, (address) , (city) , Idaho, on the ____ day of _____, 20____, at _____ o'clock ____m. The nature of the hearing is:

_____ Shelter-Care Hearing
_____ Pretrial Conference
_____ Adjudicatory Hearing
_____ Case Plan Hearing
_____ Permanency Hearing (Aggravated Circumstances)
_____ Review Hearing
_____ Permanency Hearing (12 month)
_____ Other: _____

You are further notified that the parent(s), guardian, or custodian have the right to be represented by an attorney of your choosing, or if financially unable to pay, have the right to have an attorney appointed by the court to represent the child or the parent(s), guardian, or custodian at county expense. If you wish to have an attorney appointed at county expense, you must contact the court at the address given above, at least two days prior to the hearing, for the court to inquire whether the parent(s), guardian, or custodian require the separate appointment of an attorney.

DATED this ____ day of _____, 20_____.

CLERK OF THE DISTRICT COURT

By: _____
Deputy Clerk

CERTIFICATE OF SERVICE

I hereby certify that copies of this notice were served as follows on this date: _____.

Parent(s)/Guardian/Custodian:

Hand Delivered ____ Mailed ____

Parent's/Guardian's/Custodian's
Signature of Hand Receipt

Defense Counsel:

Hand Delivered ____ Mailed ____

Prosecutor:

Hand Delivered ____ Mailed ____

Other: _____

Hand Delivered ____ Mailed ____

Probation Officer/Caseworker:

Hand Delivered ____ Mailed ____

By _____
Deputy Clerk

RULE 41. ADJUDICATORY HEARING (C.P.A.)

(a) The purpose of the adjudicatory hearing is to determine: (1) whether the child is within the jurisdiction of the court under the Child Protective Act as set forth in I.C. §§ 16-1603; and (2) if jurisdiction is found, to determine the disposition of the child. The court may also determine whether the parent subjected the child to aggravated circumstances, if aggravated circumstances were alleged in the petition or raised by written motion with notice to the parents prior to the adjudicatory hearing.

(b) The hearing shall be scheduled as set forth in I.C. § 16-1619. The hearing may not be continued more than 60 days from the date the child was removed from the home, unless the court has made case-specific, written findings as to whether the department made reasonable efforts to prevent the need to remove the child from the home.

(c) The hearing shall be conducted in an informal manner. The Idaho Rules of Evidence apply to the portion of the hearing where jurisdiction and/or aggravated circumstances is determined. The Idaho Rules of Evidence do not apply to disposition or any other portion of the hearing.

(d) In the event the court finds the child is within the jurisdiction of the court under the Child Protective Act, it shall make findings of fact and conclusions of law indicating the basis of jurisdiction.

(e) If the court finds that the child is within the jurisdiction of the court under the Child Protective Act, and if the court places the child in the custody of the department, and if the court does not find that the parent subjected the child to aggravated circumstances, then the court shall make written, case-specific findings that reasonable efforts were made but were unsuccessful in eliminating the need to remove the child from the home, or that the department's efforts to prevent removal were reasonable given that the

department's assessment accurately determined that no preventative services could be safely provided.

(f) If the adjudicatory decree is the first order of the court sanctioning removal of the child from the home, the court shall make a written, case-specific finding that remaining in the home is contrary to the welfare of the child, or, in the alternative, removal from the home is in the best interest of the child.

(g) If the court finds that the child is within the jurisdiction of the court under the Child Protective Act, and if the court vests legal custody of the child in the department, and the court does not find that the parent subjected the child to aggravated circumstances, then the court shall order the department to prepare a written case plan, to be filed with the court and served upon the parties five days prior to the hearing on the case plan. The department shall consult with the guardian ad litem and the child's parents in preparing the plan.

(h) If the court finds that the child is within the jurisdiction of the court under the Child Protective Act, and the court places the child in the child's own home under the protective supervision of the department, then the court shall order the department to prepare a written case plan, to be filed with the court and served upon the parties five days prior to the hearing on the case plan. The department shall consult with the guardian ad litem and the child's parents in preparing the plan.

(i) If the court finds that the child is within the jurisdiction of the court under the Child Protective Act, and finds that the parent has subjected the child to aggravated circumstances, then the court shall order the department to prepare a written permanency plan, to be filed with the court and served upon the parties five days prior to the hearing on the permanency plan. The department shall consult with the guardian ad litem, and the child's parents in preparing the plan.

(j) The court may authorize the department to suspend further efforts to reunify the child with the child's parent, pending further order of the court:

(1) When a petition to terminate parental rights has been filed with regard to the child; or

(2) When a petition or other motion is filed in a child protection proceeding seeking a determination of the court that the parent subjected the child to aggravated circumstances; or

(3) When a permanency plan is approved by the court pursuant to section 16-1622(4), setting forth a permanency plan for the child that does not include reunification.

Comment of the Child Protection Committee

"Contrary to the Welfare" finding under state and federal law. In order to establish eligibility for federal IV-E funding as well as federal adoption assistance funding for children in foster care, federal law requires that the court make a written, case-specific

finding, in the first order sanctioning removal of the child from the home, that remaining in the home is contrary to the welfare of the child. See 45 CFR 1356.21(c). Idaho Code §§16-1615 (5) (b) and 16-1619(6) require that the “contrary to the welfare” finding be made at the shelter care hearing and, if the court vests custody of the child in the department, again at the adjudicatory hearing. Failure to timely make the “contrary to the welfare finding” will result in loss of federal IV-E funding for the duration of the child's stay in foster care.

“Reasonable Efforts to Prevent Removal” finding under federal law. Federal law also requires that the court make a finding that either the department did or did not make reasonable efforts to prevent removal of the child from the home. “The reasonable efforts to prevent removal” finding must be made within 60 days of the child's removal from the home. 45 CFR 1356.21 (b) (i) and (ii). Failure to timely make the federal “reasonable efforts to prevent removal” finding will result in loss of federal IV-E funding for the duration of the child's stay in foster care. Federal officials overseeing the funding process have taken the position that a finding that no reasonable efforts were made due to imminent danger to the child does not comply with federal law.

“Reasonable Efforts to Prevent Removal” finding under state law. The Idaho statutory requirement for reasonable efforts to prevent removal differs from the federal requirement. Idaho Code § 16-1615(5)(b), requires that the court find either 1) that reasonable efforts were made but were unsuccessful, or 2) that no reasonable efforts were made due to imminent danger. ***The second finding authorized by state law is a “no reasonable efforts” finding that does not comply with federal law. Making this finding will jeopardize the child’s eligibility IV-E funding.***

Resolution of State/Federal requirements by Rule 39. Rule 41(e) has been drafted to require a finding that is both authorized by the first prong of Idaho Code § 16-1615(5)(b) and is consistent with the federal requirement. The Rule requires a finding that either 1) reasonable efforts were made but were unsuccessful, or 2) the department’s efforts were reasonable given that the department accurately determined that no preventative services could be safely provided.

Aggravated circumstances exception to reasonable efforts requirement. The only exception to the reasonable efforts requirement of federal law is where the parent subjected the child to aggravated circumstances.

Consequences of non-compliance with federal requirements. If the case-specific “contrary to the welfare” and “reasonable efforts” findings required by federal law are not made, or not made at the required time, the error cannot be corrected at a later date to restore funding. The required findings cannot be a simple recitation of the language of the statute; however, if the case-specific information upon which the finding is based is set forth in a document in the court record (such as an affidavit), the finding can incorporate the document by reference without reiterating the facts set forth in the document.

Recommended Best Practice on Continuances. Except in extraordinary circumstances continuances should be for very short periods of time such as two or three days, to ensure compliance with the time requirements applicable to later stages of a Child Protective Act proceeding. If the court enters an order of continuance that addresses the issue of custody of the child in any way, then the order of continuance is the first order sanctioning removal of the child from the home and the case-specific contrary to the welfare finding is required. An alternative practice is to enter the order of continuance and leave the prior declaration of imminent danger or endorsement on summons in effect without further order of the court.

RULE 42 EXTENDED HOME VISITS (C.P.A.)

If the court vests legal custody of the child in the department, then extended home visits must be approved by the court in writing prior to the extended home visit. For purposes of this rule, an extended home visit is any period of unsupervised visitation between the parent and the child that exceeds forty-eight (48) hours duration. The department may terminate an extended home visit without prior court approval when, in the determination of the department, termination of the extended home visit and removal of the child is in the best interest of the child. If the department terminates an extended home visit, the department shall prepare a written statement, setting forth when the extended home visit was terminated and the reason(s) for terminating the extended home visit. The statement shall be filed with the court within forty-eight (48) hours (excluding weekends and holidays) of the termination of the extended home visit, and shall be mailed or otherwise provided to the parties.

Comment of the Child Protection Committee

There is an important distinction between an extended home visit and a return home under “protective supervision.” In the former, the Department retains jurisdiction over the child, and the “contrary to the welfare” and “reasonable efforts to prevent removal” findings need be made if the child is returned to care after a home visit that exceeds six (6) months without prior court approval. When the child is returned home under protective supervision, the Department does not retain custody over the child. If the child is ultimately returned to care, it is treated as a new removal and the “contrary to the welfare” and “reasonable efforts to prevent removal” findings must be made anew. Failure to timely make the "contrary to the welfare" and "reasonable efforts to prevent removal" findings results in the loss of federal IV-E funding for the duration of the child's stay in foster care.

RULE 43 [RESERVED]

RULE 44 CASE PLAN HEARING/PERMANENCY HEARING – AGGRAVATED CIRCUMSTANCES (C.P.A.)

(a) If a case plan is ordered to be prepared, the court shall schedule a case plan hearing within 30 days after the adjudicatory hearing. The case plan shall include the following:

(1) The plan shall identify the services to be provided to the child, including services to identify and meet any special educational, emotional, physical, or developmental needs the child may have, to assist the child in adjusting to the placement, or to ensure the stability of the placement. The plan shall also address options for maintaining the child's connection to the community, including individuals with a significant relationship to this child, and organizations or community activities with who the child has a significant connection.

(2) The case plan shall include a reunification plan. The reunification plan shall identify all issues that need to be addressed before the child can safely be returned home, without department supervision. The order may specifically identify such issues to be addressed by the plan. The reunification plan shall specifically identify the tasks to be completed by the department, each parent, or others to address each issue, including services to be made available by the agency to the parents and in which the parents are required to participate, and deadlines for completion of each task. When appropriate the reunification plan should identify terms for visitation, supervision of visitation, and/or child support.

(3) The case plan shall include an alternative permanency plan. The permanency plan shall

(A) address all options for permanent placement of the child;

(B) address the advantages and disadvantages of each option, in light of the child's best interest;

(C) include recommendations as to which option is in the child's best interest;

(D) specifically identify the actions necessary to implement the recommended option, and schedules for accomplishing those actions;

(E) address options for maintaining the child's connection to the community, including individuals with a significant relationship to the child, and organizations or community activities with whom the child has a significant connection; and

(F) identify further investigation necessary to identify and/or assess other options for permanent placement, to identify actions necessary to implement the recommended placement, or to identify options for maintaining the child's significant connections.

(b) If the court orders the preparation of a case plan because the child has been placed in the child's own home under the protective supervision of the department, the case plan shall include the same information set forth in subsections (a)(1) and (2) above.

(c) If the court finds that the parent has subjected the child to aggravated circumstances, then the court shall order the department to prepare a written permanency plan, and the court shall schedule a permanency hearing within 30 days after the adjudicatory hearing. The permanency plan shall include the same information as the case plan described in subsections (a)(1) and (3) above.

RULE 45. REVIEW HEARINGS (C.P.A.)

(a) At review hearings, the court shall review compliance with the case plan, and the progress of the department in achieving permanency for the child. The court may:

- (1) modify the case plan or permanency plan as appropriate;
- (2) modify disposition (provided that where a child was placed in the child's own home under the protective supervision of the department, modification is subject to the requirement of I.C. § 16-1623);
- (3) determine whether the department has made reasonable efforts to finalize a permanency plan for the child;
- (4) enter further orders as necessary or appropriate to ensure the progress of the case towards achieving permanency for the child.

(b) The court may continue a review hearing for a short period of time to give the parties time to respond to substantive issues raised for the first time at a review hearing. The court may enter temporary orders as appropriate pending the continued hearing.

(c) If the next review hearing to be scheduled is the annual permanency hearing described at I.C. § 16-1622(4), the court shall order the department to prepare a written permanency plan, to be filed with the court and served upon the parties at least 5 days prior to the hearing.

(d) If the child has been in the custody of the department and placed in out-of-home care for 15 of the last 22 months, and a petition to terminate parental rights has not been filed, then the state shall file a motion for an order finding that the filing of the petition would not be in the best interest of the child, that reasonable efforts have not been provided to reunite the child with his family, or that the child is placed permanently with a relative. If the court denies the motion, the court may set a deadline for the filing of such a petition. If a motion has not been filed as required in this rule, the court may set a deadline, by which time the state must file either a petition to terminate parental rights or a motion as described above.

Comment of the Child Protection Committee

As a matter of best practice the court should regularly review the department's efforts to finalize the permanency plan for the child.

RULE 46 ANNUAL PERMANENCY HEARINGS

(a) The permanency plan may be, but is not limited to, one of the following: continued efforts at reunification, termination of parental rights and adoption, guardianship, or long-term foster care. The plan shall specifically identify the activities necessary to implement the plan, and set forth schedules for the accomplishment of those actions.

(b) The court may approve a permanency plan of long-term foster care only upon written case-specific findings that there are compelling reasons why a more permanent plan is not in the best interest of the child.

(c) The court shall make written case-specific findings whether the department made reasonable efforts to finalize a permanency plan for the child.

Comment of the Child Protection Committee

As to subsection (b), Federal law requires the agency to document, and the court to find, compelling reasons why termination of parental rights and adoption, guardianship, or long-term placement with a relative is not in the best interest of the child, before approving a permanency plan of long term foster care. C.F.R. 1356.21(h)(2).

As to subsection (c): A judicial determination must be made as to whether the Department did or did not make reasonable efforts to finalize the permanency plan that is in effect. 45 C.F.R. 1356.21(b)(2)(i) and (ii) The finding must be a case-specific retrospective review of the efforts made by the Department to finalize the permanency plan that is in effect.

This finding must be made within twelve (12) months of the date the child is considered to have entered foster care and at least once every twelve (12) months thereafter. 45 C.F.R. 1356.21(b)(2)(i) and (ii). A child is considered to have entered foster care on the earlier of the date of the first judicial finding that the child has been subjected to child abuse or neglect or the date that is sixty (60) calendar days after the date on which the child is removed from the home. A state may use a date earlier than that required by federal regulations. 45 C.F.R. 1355.20 I.C. § 16-1622(4) requires that the hearing to review the permanency plan be held prior to twelve (12) months from the date the child is removed from the home or the date of the court's order taking jurisdiction under this chapter, whichever occurs first.

If a judicial determination regarding reasonable efforts to finalize a permanency plan is not made in accordance with federal regulations, the child becomes ineligible under title IV-E at the end of the month in which the judicial determination was required to have been made, and remains ineligible until such a determination is made. 45 C.F.R. 1356.21 (b)(2)(ii)

RULE 47. MODIFICATION OR REVOCATION OF DISPOSITION OR CASE PLAN (C.P.A.)

Any C.P.A. disposition or case plan may be modified or revoked at any time that the court has jurisdiction over the child. If the modification is to remove a child from the home who has been placed there under protective supervision, then the modification shall be made in accordance with the procedure set forth in I.C. § 16-1623.

Comment of the Child Protection Committee

There is an important distinction between an extended home visit and a return home under “protective supervision”. In the former, the Department retains jurisdiction over the child, and the “contrary to the welfare” and “reasonable efforts to prevent removal” findings need be made only if the child is returned to care after a home visit that exceeds six (6) months without prior court approval. When the child is returned home under protective supervision, the Department does not retain custody over the child. If the child is ultimately returned to care, it is treated as a new removal and the “contrary to the welfare” and “reasonable efforts to prevent removal” findings must be made anew. Failure to timely make the “contrary to the welfare” and “reasonable efforts to prevent removal” findings results in the loss of federal IVE funding for the duration of the child's stay in foster care.

RULE 48. TERMINATION OF PARENT-CHILD RELATIONSHIP (C.P.A.)

(a) At any time after the entry of a decree finding that the child is within the jurisdiction of the court under the C.P.A. a petition for termination of the parent-child relationship may be filed in accordance with the provisions of I.C. § 16-1624 and Chapter 20, Title 16, of the Idaho Code.

(b) The petition to terminate parental rights shall be filed in the same case as the proceeding under the Child Protective Act, for purposes of judicial administration only. All appointments of attorneys and guardians ad litem in the proceeding under the Child Protective Act shall remain in effect for purposes of proceedings on the petition to terminate, unless otherwise ordered by the court. The petitioner must serve process in accordance with the statute governing termination of parental rights, set forth at Chapter 20, Title 16, Idaho Code. At trial on the petition to terminate parental rights, the petitioner must meet its burden of proof through evidence admissible pursuant to the Idaho Rules of Evidence; no part of the court's record in the proceeding under the Child Protective Act may be used for purposes of meeting the petitioner's burden of proof in the trial on the petition to terminate parental rights, unless the part offered is admissible under the Idaho Rules of Evidence, or unless the parties stipulate to its admission.

RULE 49. RIGHT OF APPEAL (C.P.A.)

(a) An aggrieved party may appeal to the district court those orders of the court in a C.P.A. action specified in I.C. § 16-1625.

(b) During the pendency of an appeal of a C.P.A. proceeding, or of an order, decree or judgment terminating parental rights, from the magistrate's division to the district court, and any further appeal to the Supreme Court, the magistrate shall continue to conduct review hearings and annual permanency hearings pursuant to I.C. § 16-1622 and to enter orders thereon, unless otherwise ordered by the district judge or the Supreme Court. If the district judge or the Supreme Court orders that the magistrate judge shall not conduct the review hearings and annual permanency hearings, then the district judge or the Supreme Court will conduct the review hearings and annual permanency hearings.

RULE 50: TRANSFER OF VENUE (C.P.A.)

(a) Transfer of venue in a case under the Child Protective Act is governed by these rules and is not subject to the Idaho Rules of Civil Procedure.

(b) Venue in a case under Child Protective Act may not be transferred prior to the entry of a decree finding the child within the jurisdiction of the court under the Child Protective Act.

(c) In the discretion of the court, venue in a case arising under the Child Protective Act may be transferred when the following conditions exist:

(1) The court has entered a decree finding the child within the jurisdiction of the court under the Child Protective Act;

(2) It is in the best interest of the child;

(3) All parties either agree or do not object to the transfer;

(4) The Department of Health & Welfare is able and ready to provide services in case management in the new county;

(5) The parents or a parent who is the subject of a reunification plan lives in the receiving county;

(6) Prior to the transfer, the receiving county court either verbally or in writing agrees to receive the case; and

(7) All currently needed hearings and findings have been completed and transfer will not jeopardize the ability of the court or parties to comply with the time requirements of the Child Protective Act or these rules.

(d) Counsel of record and guardians ad litem shall continue in the case unless there is a stipulation for substitution of counsel and/or guardians ad litem with the new counsel or guardians ad litem or an order of the receiving court allowing withdrawal of counsel or guardians ad litem.

(e) If a case is transferred, the clerk shall forward the original file to the receiving court and shall maintain a copy of the file in the sending jurisdiction for record purposes and shall, if possible, transfer any ISTARS record to the receiving county.

(f) The receiving county will conduct a review hearing of the case status within sixty (60) days of receipt of the file.

Comments of the Child Protection Committee

If parents do not live in the county where the child protection case is open it can limit the effectiveness of reunification efforts or case supervision. Best practice requires court orders limiting parents from moving without court approval. Because the major effort in CPA cases is resolution of the parents' issues, venue is best served in counties where the parents live; not where the department may have placed the child(ren) for services. A CPA case may arise away from the home county of the parents or a move is in the best

interest of resolving CPA issues. In these very limited situations a case should be transferred. This rule deals with transfer within the state of Idaho. Cases may not be transferred to another state. Through the Interstate Compact services may be obtained in member states, but court proceedings remain in Idaho.

RULE 51. APPLICATION OF IDAHO RULES OF EVIDENCE (C.P.A.) (J.C.A.)

(a) The Idaho Rules of Evidence shall apply to J.C.A. proceedings except in the following situations:

(1) Detention review hearings. Pre-adjudication detention hearings held under I.C. § 20-516 and Idaho Juvenile Rule 7.

(2) Sentencing hearings. Sentencing hearings held under I.C. § 20-520 and Idaho Juvenile Rule 17.

(b) The Idaho Rules of Evidence shall apply in C.P.A. proceedings only to the portion of the adjudicatory hearing where jurisdiction and/or aggravated circumstances is being determined.

(c) Where a petition to terminate parental rights has been filed in a C.P.A. case, the Idaho Rules of Evidence shall apply to proceedings on the petition to terminate.

(d) The Idaho Rules of Evidence shall not apply in proceedings under I.C. § 20-511A and Idaho Juvenile Rule 54.

Comment of the Child Protection Committee

Rule 101 of the Idaho Rules of Evidence contains parallel provisions clarifying their applicability to J.C.A. and C.P.A. actions.

RULE 52. CLOSED HEARINGS (C.P.A.) (J.C.A.)

(a) All C.P.A. hearings shall be closed to the public, except for those persons found by the court to have a direct interest in the case or in the work of the court.

(b) All Juvenile Correction Act proceedings on a petition filed under I.C. § 20-510 shall be closed to the public except for those persons found by the court to have a direct interest in the case or who work for the court, until a admit/deny hearing is held pursuant to Idaho Juvenile Rule 6 to permit the parties to request that the court consider, or permit the court to consider on its own motion, closing the proceedings. Thereafter the proceedings shall be open unless the court enters an order closing them. At the admit/deny hearing, the court shall make a determination whether the proceedings shall be opened or closed to the public as provided in (1) and (2) below:

(1) Juvenile Correction Act proceedings brought against any juvenile under the age of fourteen (14) or brought against a juvenile fourteen (14) years or older who is charged

with an act that would not be a felony if committed by an adult may be closed to the public at the court's discretion by a written order made in each case.

(2) Juvenile Correction Act proceedings brought against a juvenile fourteen (14) years or older who is charged with an act that would be a felony if committed by an adult shall be open to the public unless the court determines by a written order made in each case that extraordinary circumstances exist which justify that the proceedings should be confidential.

(c) All hearings and screening team meetings held pursuant to I.C. § 20-511A and Idaho Juvenile Rule 54 shall be closed to the public.

(d) Notwithstanding any other provision of this rule, in every case the court may exclude the public from a proceeding during the testimony of a child witness or child victim if the court determines that the exclusion of the public is necessary to protect the welfare of the child witness or child victim.

(e) Persons found by the court to have a direct interest in the case or who work for the court may attend all Juvenile Corrections Act proceedings.

(f) If a juvenile fourteen (14) years or older who is charged with an act which would be a felony if committed by an adult is found not to have committed an act that would be a felony if committed by an adult, or the charge is reduced to allege an act that would not constitute a felony if committed by an adult, all further court proceedings may be closed upon written order of the court made in each case.

(g) If a petition filed against a juvenile fourteen (14) years or older alleges acts committed by the juvenile which would be a felony if committed by an adult, and acts which would be a misdemeanor if committed by an adult or a status offense, or if separate petitions are filed against a juvenile fourteen (14) years of age or older which, if consolidated, allege acts which would be a felony if committed by an adult, and acts which would be a misdemeanor if committed by an adult or a status offense, the proceedings relating to all of the charges, including those charges alleging acts which would be a misdemeanor if committed by an adult or a status offense, shall be open to the public as though all of the charges allege acts which would be felonies if committed by an adult. The case records and files of the proceedings in such a case shall be subject to the disclosure provisions of Idaho Juvenile Rule 53 and Rule 32 of the Idaho Court Administrative Rules.

Comment of the Child Protection Committee

This rule gives the court broad discretion on who may attend juvenile proceedings. The direct interest standard can be considered on a case-by-case basis. This standard is consistent with I.C. § 16-1613.

RULE 53. RELEASE OF INFORMATION (C.P.A.) (J.C.A.)

A court shall not disclose any of the contents of a case file of any action brought under the Juvenile Corrections Act or the Child Protective Act, nor other records of such proceedings, except as authorized under Rule 32 of the Idaho Court Administrative Rules and I.C. § 16-1626 (addressing the disclosure of judicial records.)

Comments of the Child Protection Committee

This rule is intended to be consistent with I.C.A.R. 32 regarding the disclosure of juvenile court records. It is likewise intended to eliminate confusion created by inconsistent state statutes and Supreme Court rules by referring to one source only for guidance regarding the disclosure of juvenile court records.

RULE 58. ICWA (C.P.A.)

In any child custody proceeding where the court or any party knows or has reason to know that a child who is the subject of the proceedings is a member of, or is eligible for membership in an Indian tribe, notice of the proceedings shall be provided to the child's parent(s) or Indian custodian and to the appropriate Indian tribe. If the child is an Indian child as defined by the Indian Child Welfare Act, then the provisions of the ICWA, 25 U.S.C. § 1901, et seq., and 25 C.F.R. § 23.11 shall apply.

Comment of the Child Protection Committee

If the child is an Indian child as defined by the Indian Child Welfare Act (ICWA), then ICWA applies. ICWA is discussed in detail in Chapter IX of the Idaho Child Protection Manual. Failure to comply with ICWA could substantially compromise the finality of any proceeding under the Child Protective Act, the termination of parental rights statute and/or the adoption statute.